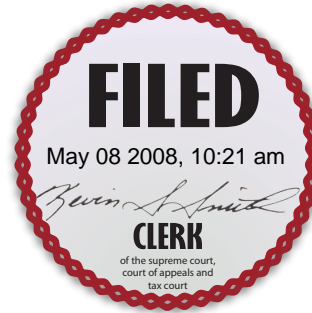


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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VICTOR CREWS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-0708-CR-406

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Salvador Vasquez, Judge  
Cause No. 45G01-0512-FA-60

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**May 8, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Following a jury trial, Appellant-Defendant Victor Crews was convicted of one count of Voluntary Manslaughter, a Class A felony,<sup>1</sup> for which he received a sentence of thirty years in the Department of Correction. Crews has presented two issues for review. First, Crews challenges the sufficiency of the evidence to support his conviction and rebut his claim of self-defense. Second, Crews claims that the trial court's jury instruction regarding self-defense constituted fundamental error. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On March 10, 2005, shortly before midnight, Crews and his friend Kriston Barbee entered the Bamboo Lounge in Gary, Indiana. (Tr. 79) Crews and Barbee joined several friends who were already present in the Bamboo Lounge. (Tr. 81, 304) Both Crews and Barbee had consumed alcohol prior to arriving at the bar. (Tr. 84) Crews was refused service by the bartender because he was not of legal drinking age but remained at the bar and eventually persuaded other patrons to purchase him alcoholic drinks. (Tr. 127, 129, 312-313)

Also in the bar this particular night was a regular patron named Everett Cooper. (Tr. 131) Cooper was a forty-five-year-old male who lived in a nearby neighborhood and would often stop in the bar on his way home. (Tr. 132) Cooper walked with a limp as a result of a knee replacement and steel rod that was surgically implanted into his thigh following a car accident. (Tr. 33) As he often did, Cooper was carrying a Glock .40 caliber pistol on his person. (Tr. 35)

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<sup>1</sup> Ind. Code § 35-42-1-3 (2004).

Some time after 1 a.m., as a result of an unrelated incident involving Crews and another patron, the bartender decided to close the Bamboo Lounge for the night and requested that all patrons finish their drinks and leave. (Tr. 129, 301) The bartender then asked Cooper to assist with ushering out those remaining in the bar and with locking the door. (Tr. 130) As Cooper was closing the door, Crews came back into the bar and began fighting Cooper. (Tr. 139) Crews hit Cooper, knocking him to the floor. (Tr. 139) As fighting continued between Crews and Cooper, two of Crews's other friends, Barbee and Jerome Taylor, became involved. (Tr. 96, 139) At various points during this altercation, Crews and his friends punched and kicked Cooper, and Crews hit him over the head with a liquor bottle. (Tr. 289)

While lying on the ground, Cooper pulled out his pistol and, during a struggle for the weapon, Cooper shot Barbee. (Tr. 97) During this same sequence of events, Taylor was also shot, and died shortly thereafter. (Tr. 165-170) Before leaving the bar, Crews was able to wrestle the gun away from Cooper. (Tr. 290) Finally, Cooper was shot in the head and left lying on the ground at the Bamboo Lounge.

When Gary Police Officer Keith Eller arrived, he found a gunshot victim lying outside. (Tr. 220) Among the onlookers was a hysterical Crews who stated he had just witnessed a shooting. (Tr. 219-220) At this point, Officer Eller placed Crews, without handcuffs, in his squad car as a witness and proceeded into the bar. (Tr. 220) As Eller entered the crime scene, he found a gun in the trash can near the door and a second gunshot victim lying on the floor surrounded by broken glass. (Tr. 222) As Officer Eller returned to his squad car to check on Crews, he saw him running toward another vehicle.

(Tr. 226) Officer Eller then witnessed Crews enter the vehicle and drive away. (Tr. 226) Crews was shortly stopped by another officer on patrol and was arrested for resisting law enforcement. (Tr. 228)

Once in custody, Crews made a voluntary statement to Sergeant Jack Arnold of the Gary Police Department stating:

Question: “You were able to get the gun from the older man?”

Answer: “Yeah.”

Question: “How many times did you shoot the older man?”

Answer: “I believe the gun went off one or two times.”

Question: “Why did you take the gun from the older man and shoot at him one or two times?”

Answer: “It was all out of self-defense. I was scared of my life and for my friend’s life, Jerome Taylor.”

Tr. p. 290.

On December 29, 2005, the grand jury indicted Crews for the voluntary manslaughter of Cooper. Crews was tried on May 21-23, 2007, and the jury found Crews guilty of voluntary manslaughter. This appeal follows.

## **DISCUSSION AND DECISION**

### **I. Sufficiency of the Evidence**

#### **A. Knowing and Intentional Killing**

Crews argues that insufficient evidence exists to prove that he knowingly and intentionally killed Cooper. Our standard of review for sufficiency-of-the-evidence claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences

which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

In order to prove that one has committed voluntary manslaughter, the state must prove that the defendant knowingly or intentionally killed another while acting under sudden heat. Ind. Code § 35-42-1-3 (2004). Here, Crews contends that he did not knowingly or intentionally kill Cooper, claiming that he was unaware that the gun had been fired and further contends that the state presented no witnesses rebutting this claim.

Crews's challenge to the sufficiency of the evidence is merely an invitation to reweigh the evidence, which we will not do. Evidence was presented in the form of Crews's statement to the police, which a jury could infer was proof that he admitted to killing Cooper. Still other evidence, including the fact that Crews was at the scene of the shooting, possessed the gun, had a motive for killing Cooper, and fled the scene of the accident, could have properly been considered by the jury in finding guilt. Furthermore, the jury was entitled to interpret the language of Crews's statement and judge its truth and veracity as well as the credibility of any other witnesses presented at trial. We refuse to second-guess such determinations. In giving due deference to the fact-finder, we conclude the evidence was sufficient to support Crews's voluntary manslaughter conviction.

## **B. Self-Defense**

Crews also challenges the sufficiency of the evidence by contending the State failed to rebut his claim of self-defense. Specifically, Crews claims that no evidence exists to contradict his claim that he acted in self-defense.

A valid claim of self-defense is legal justification for an otherwise criminal act. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). In order to prevail on such a claim, the defendant must show that he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. *McEwen v. State*, 695 N.E.2d 79, 90 (Ind. 1998). When there is support for a self-defense claim in the record, the State bears the burden of negating at least one of the necessary elements. *Id.* “If a defendant is convicted despite his claim of self-defense, [this court] will reverse only if no reasonable person could say that self-defense was negated by the state beyond a reasonable doubt.” *Wilson v. State*, 770 N.E.2d 779, 800-01 (Ind. 2002).

The standard of review for sufficiency of the evidence to rebut a claim of self-defense is no different than for any sufficiency-of-the-evidence claim. *Sanders v. State*, 704 N.E.2d 119, 123 (Ind. 1999). We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* The verdict will not be disturbed if there is sufficient evidence of probative value to support the conclusion of the factfinder. *Id.*

The record contains evidence that Crews, who hit Cooper, in fact, provoked the initial altercation with Cooper. On this fact alone, the jury was free to determine that Crews was not acting in self-defense. Indiana law does not permit the use of force in

defending oneself if “the person has entered into combat with another person or is the initial aggressor unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action.” Ind. Code § 35-41-3-2(e)(3) (2004). There was no evidence presented by Crews indicating that he withdrew from the violence or that he communicated any intent to withdraw to Cooper. Further, even assuming, *arguendo*, that Crews was not the initial aggressor, his willing participation in the violence, a fact undisputed by Crews, is sufficient evidence to rebut his claim of self-defense. *Wilson*, 770 N.E.2d at 801 (holding that the defendant’s willing participation in the violence was, on its own, sufficient evidence to rebut a claim of self-defense).

Furthermore, even assuming that Crews acted without fault, the record shows that once the gun was removed from Cooper’s possession, Crews no longer had a reasonable fear or apprehension of death or great bodily harm. At the time he was shot, Cooper was on the ground with little chance to defend himself and even less opportunity to cause serious injury or death to Crews. Rather, the reasonable inference was that Crews was retaliating for the shooting of his two acquaintances. We conclude the evidence was sufficient to rebut Crews’s self-defense claim.

## **II. Self-Defense Instruction**

Crews has also alleged that the trial court committed fundamental error by instructing the jury that one of the necessary elements of self-defense was that the defendant “was in a place where he had a right to be in relation to his alleged assailant.” Appellant’s Brief p. 15. This instruction, Crews alleges, enabled the jury to disregard his

claim of self-defense because he was in a bar while under twenty-one. Crews claims that his age should have been a non-factor regarding self-defense because he was in a public place.

Because Crews did not object to this instruction at trial, he has waived this issue on appeal. *Boesch v. State*, 778 N.E.2d 1276, 1279 (Ind. 2002). To avoid procedural default, he contends that giving the instruction was fundamental error.

The fundamental error rule is extremely narrow, and applies only when an error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the error denies the defendant fundamental due process. *Id.* When determining whether a defendant suffered a due process violation based on an allegedly incorrect jury instruction, we look not to the instruction in isolation, but in the context of all relevant information given to the jury, including closing argument, and other instructions. *Id.* There is no resulting due process violation where all such information, considered as a whole, does not mislead the jury as to a correct understanding of the law. *Id.*

The instruction given by the trial court was a correct statement of Indiana law. *See Brown v. State*, 738 N.E.2d 271, 273 (Ind. 2000) (stating that the elements of self-defense include that the defendant was in a place where he had a right to be). We cannot say that the trial court committed fundamental error because the Indiana Supreme Court has stated that this is an accurate statement of the law. *Thorton v. State*, 570 N.E.2d 35, 37 (Ind. 1991).



Regardless, there is no indication that the jury was misled by the use of this instruction. No evidence exists indicating that the jury was instructed that because Crews was underage in a bar, he had no legal right to self-defense.<sup>2</sup> Taken as a whole, the evidence does not indicate that the jury was misled by the instruction. The two other elements of self-defense given in the instruction—that the defendant acted without fault and in reasonable fear or apprehension of death or great bodily harm—could have both been reasonably relied upon in the jury’s ultimate determination on the self-defense issue. Crews’s claim of fundamental error is without merit.

The judgment of the trial court is affirmed.

BAKER, C.J., and DARDEN, J., concur.

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<sup>2</sup> Indiana Law has not yet addressed the right to self-defense by an alleged trespasser and we decline to do so. *Lemon v. State*, 868 N.E.2d 1190, 1197 (Ind. Ct. App. 2007).